Court No.2

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL.

A.O. No. 16 of 2004

The New India Assurance Company Ltd.,
87, Mahatma Gandhi Road, Mumbai and
Divisional Office at Dehradun through its
Divisional Manager,

..... Appellant.

Versus

Smt. Chandrakanta and others.

..... Respondents.

.....

Sri V.K. Kohli learned counsel for the appellant,
Sri Alok Singh, learned counsel for the claimants/respondents.

Date: 31st Aug., 2004.

Hon'ble P.C.Verma,J.
Hon'ble B.S.Verma,J.

This appeal has been preferred by the New India Assurance Company Ltd. against the judgment and award dated 24.11.2003 passed by Motor Accident Claims Tribunal/District Judge, Dehradun in Motor Accident Claim Case No. 288 of 2001, Smt.Chandrakanta & others versus the New India Assurance Company and others, whereby the claim petition was decreed for an amount of Rs. 2,70,000/- alongwith interest at the rate of 9% per annum from the date of application till the date of payment.

2- Brief facts giving rise to this appeal are that deceased Purshotam Dass was going to his houses on 17.10.2001 in a truck Tata 407 bearing registration No. UP 07 D-2878. Near Police out post Nand Chowki, Chakrata

Road at 10.00 P.M. the driver of the vehicle lost control and the same fell down in a *Nala* . The offending vehicle was being driven rashly and negligently at the time of its accident by its driver Mohd. Akram. Purshotam Dass sustained grievous injuries and died in the Hospital on 24.10.2001. The deceased was aged about 41 years at the time of accident and he was doing his private job of salesman thereby earning Rs. 4,000/- per month. The claimants filed claim petition before the Tribunal for a compensation of Rs. 9,00,000/- due to death of Purshotam Dass.

3- The Opp.parties contested the case by filing their separate written statement. The owners and driver of the offending vehicle denied the allegations of the claim petition and stated that the driver of the vehicle Mohd.Akram was driving the vehicle in a controlled speed but at the time of the accident a car appeared all of a sudden before the truck and to avoid the accident the driver cut the truck to its extreme left and in this process the truck fell down and turned turtle. The Opp.party No.1 New India Assurance Company also denied the allegations made by the claimants in the claim petition. On the basis of the pleadings adduced by the parties, the Tribunal framed necessary issues and after recording the evidence of the parties decreed the claim petition accordingly. Feeling aggrieved, the New India Assurance Company has come up in this appeal.

4- The learned counsel for the appellant contended that the finding of the court below on issue No.3 is perverse and against the evidence on record because it was clearly established by evidence on record that the deceased Purshotam Dass was a gratuitous passenger in the goods vehicle and hence the Insurance Company was not liable.

Further the gratuitous passenger is not covered under the insurance policy. We have perused the entire material on record and perused the impugned judgment. The learned Tribunal framed issue No.3 which reads as under:-

> *"Whether the deceased Purshotam Dass was a gratuitous person in the offending truck as has been pleaded by the insurer of the truck in para 12 of the Written statement, if so, its effect?*

5- In the trial the claimants produced P.W.1 Smt. Chandrakanta in support of their case. The opposite parties i.e. owners and driver of the offending truck produced Mohd.Akram O.P.W.1 in the witness box and also filed the documentary evidence. On the basis of the oral evidence as well as documentary evidence the Tribunal has given a detailed finding on this issue and held that the deceased Purshotam Dass was not a gratuitous passenger in the offending truck as has been pleaded by the Insurance Company in para 12 of the written statement. We are of the opinion that the learned Tribunal has rightly held that the deceased was not a gratuitous passenger and rightly held the Insurance Company liable for the compensation. However, nothing has been shown to us on behalf of the appellant-Insurance Company so as to warrant any interference with the findings arrived at by the learned Tribunal in the case under appeal. We affirm the finding recorded by the Tribunal on issue No.3. Accordingly, the appeal fails on merit.

6- The appeal is dismissed. The impugned order under appeal is affirmed. No order as to costs. The amount deposited in the appeal shall be remitted to the concerned Tribunal.

(B.S. Verma, J.) **(P.C.Verma, J.)**

31.08.2004
P.Singh